

**KENTUCKY PERSONNEL BOARD  
MINUTES OF FEBRUARY 13, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on February 13, 2009, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair  
Betty Gibson, Member  
M. Suzanne Cassidy, Member  
Julie True, Member  
Larry Gillis, Member  
Mark A. Sipek, Executive Director and Secretary  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Robert B. Frazer, Vice-Chair  
John Dunaway, Member  
Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 9, 2009**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Gibson moved to approve the minutes, with clerical correction. Ms. True seconded, and the motion carried 4-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek stated that before Mr. Crocker left for military leave he met with Representative Cherry concerning House Bill 304, also known as the Merit Employee Protection Act. Mr. Sipek stated that HB 304 went before the State Government Committee yesterday (February 12, 2009) and is headed to the floor of the House. HB 304 includes language about Personnel Board elections. Those provisions will streamline the process and increase the opportunity for participation. HB 304 also touches on various aspects of KRS Chapter 18A.

Also relating solely to Personnel Board Elections is HB 325, which is sponsored by Representative Stevens. This version has everything the Board had discussed the last few months and is more cost-saving to the Board by the way the provisions are written. The language is more adaptable to future improvements in technology; specifically, the Kentucky Human Resources Information System (KHRIS). Although HB 304 would be an improvement, of the two major bills affecting the Personnel Board, HB 325 is more favored.

Mr. Sipek advised that 101 KAR 1:325, Probationary Periods (which the Board approved at its December 12, 2008 meeting), went through the Regulation Review Subcommittee with no problem.

Mr. Sipek stated that the Statistics for the 2008 Calendar Year report show a similar trend of fewer appeals when compared with the Fiscal Year 2008 report. The Board had 208 appeals pending at the end of calendar year 2008, which is a manageable workload. Mr. Sipek further stated that settlements continue to rise, which contributes to the decrease in the number of appeals pending.

Mr. Sipek informed the Board that the Kentucky Court of Appeals affirmed the action of the Personnel Board and the Franklin Circuit Court in the appeal of *William Wolejsza v. Governor's Office of Local Development*, 2008-CA-573-MR.

Mr. Gillis asked if the Personnel Board will take an official position on HB 304; specifically as to "burrowing" and the definition of "penalization" and "promotion." Mr. Sipek stated that the Personnel Board has not taken an official position; however, that could be discussed before the end of the meeting. Ms. Cassidy asked if the Board members could have a copy of HB 304 before it was discussed. Mr. Sipek stated that copies would be made and distributed. Ms. Cassidy further asked if an official position was not taken by the Board, could she contact her own Representative. Mr. Sipek agreed she could.

Ms. True asked what attributed to the increase in settlements. Mr. Sipek stated that the Kentucky Employees Mediation Program is mentioned at every pre-hearing conference, which gets the agencies to at least think about it.

At the conclusion of Mr. Sipek's report, Chair Goodmann called for the Personnel Cabinet's Report.

#### 4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington stated that the Personnel Cabinet is also very involved in legislation and has been working closely with the Personnel Board on a couple of bills.

In addition to legislation, the Cabinet has been overwhelmed with KHRIS, which encompasses the entire Commonwealth. All agencies will be involved in training over the next six weeks. Ms. Bevington invited the Board members to see a demonstration of the new system, perhaps next month after the Board meeting.

Ms. Bevington stated that the biggest regulation change, in light of KHRIS, is that a P-1 (Request for Personnel Position Action Form) will be replaced by a Personnel Action Notification (PAN). PANs will only be issued when there is a change in position, salary or whatever affects an employee's job situation. Another change in the regulation was to include forty (40) hours under Section 2, Attendance: Hours of Work. A copy of the proposed amendment to 101 KAR 2:095, Classified Service Administrative Regulations, has been provided to the Board members, along with a copy of the new PAN form. The regulation will be in force March 31, 2009, when KHRIS goes live.

Upon further questioning from Mr. Sipek for clarification when PANs are issued, Ms. Bevington explained that with KHRIS an employee will be able to go into the system and change their address, without receiving a PAN. However, if there is a change in the employee's salary or position, the employee will receive a PAN. Ms. Cassidy asked if there would be a master list showing what actions an employee would receive a PAN. Ms. Bevington replied that yes, Personnel Administrators and Cabinet heads would be notified which actions require a PAN. Ms. Cassidy asked if that would be uniform across the state, which Ms. Bevington stated it would. Mr. Gillis added that a salary change, position change, organization change, or annual increments would all be issued with a PAN. Through KHRIS, for example, employees will be able to change their home address, number of dependents on their health insurance, and banking information.

Mr. Sipek stated that the Cabinet needs action from the Board, whether it is approval or any suggestions the Board would like to make. Chairman Goodmann asked for a motion.

Ms. True moved to approve the amendment to 101 KAR 2:095, Classified Service Administrative Regulations. Ms. Cassidy seconded and the motion carried 3-0, with Mr. Gillis recusing.

In addition, Ms. Bevington advised that the Veterans Preference Regulation has been approved at all levels and has gone through the initial subcommittee.

To conclude, Ms. Bevington informed the Board that the Cabinet is hosting a Black History Month celebration at the Transportation Cabinet on February 17, 2009, and they will be conducting FMLA Training at LRC on February 27, 2009.

At the conclusion of Ms. Bevington's report, Chair Goodmann asked the parties to come forward for oral argument.

5. **ORAL ARGUMENT:**

A. Vicky Wilson v. Cabinet for Health and Family Services

Present were counsel for Appellant, the Hon. John Lindsey Adams, and counsel for Appellee, the Hon. Amber Arnett, for oral argument. The parties answered questions from the Board.

6. **INVESTIGATIONS:**

A. Energy and Environment Cabinet, Division of Mine Reclamation, Pikeville  
(Anonymous Request by concerned employees)  
--Response from Energy and Environment Cabinet

Present was counsel for Appellee, the Hon. Gordon Slone. Mr. Slone stated that the anonymous complaint was incorrect. Specifically, Mr. Ramey's CDL license was not suspended. There was no issue with Mr. Ramey losing his license. The expiration of the register was the Agency's fault. Mr. Slone answered questions from the Board.

Ms. Cassidy moved to deny the request for investigation. Ms. Gibson seconded and the motion carried 4-0.

7. **CLOSED SESSION:**

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. True seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (10:20 a.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 4-0. (11:55 a.m.)

8. **CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Vicky Wilson v. Cabinet for Health and Family Services

Mr. Gillis moved to defer this matter to the next Board meeting. Ms. True seconded and the motion carried 4-0.

B. Lowell Grubb v. Justice and Public Safety Cabinet  
**Deferred from January meeting**  
--Appellee's Exceptions (Returned as untimely.)

Ms. Cassidy moved to accept the Final Order as altered and attached to these minutes dismissing the appeal. Mr. Gillis seconded and the motion carried 4-0.

C. Lynn McAleer v. Energy and Environment Cabinet

Ms. True moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

D. Diana Schabacker v. Transportation Cabinet

Ms. Cassidy moved to defer this matter to the next Board meeting. Ms. True seconded and the motion carried 4-0.

E. Elizabeth Adkins v. Administrative Office of the Courts

Mr. Gillis moved to accept the recommended order dismissing the appeal for lack of jurisdiction. Ms. Cassidy seconded and the motion carried 4-0.

F. William Buntain v. Tourism, Arts and Heritage Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. True seconded and the motion carried 4-0.

G. Eugenia Jump v. Public Protection Cabinet

Ms. Cassidy moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 4-0.

H. Susan Nightengale v. Energy and Environment Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. True seconded and the motion carried 4-0.

I. Melissa Powell v. Education and Workforce Development Cabinet and Personnel Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

J. Rita Ruggles v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. True seconded and the motion carried 4-0.

**Show Cause Order – Appeal Dismissed - Response Filed**

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute. The Appellant filed a response to the show cause order.

K. Douglas Downs v. Department of Veterans' Affairs  
--Response by Appellant  
--Response by Appellee to Appellant

Ms. Gibson moved to note Appellant's response, Appellee's reply and finding the Appellant had shown sufficient cause for failure to appear at the hearing, to remand this matter to the active docket. Ms. Cassidy seconded and the motion carried 4-0.

**Show Cause Order – Appeal Dismissed - No Response Filed**

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

L. Martha May v. Justice and Public Safety Cabinet

Ms. Gibson moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Gillis seconded and the motion carried 4-0.

9      **WITHDRAWALS:**

Ms. Cassidy moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Gibson seconded and the motion carried 4-0.

- A.     Janet Belew v. Bullitt County Health Department
- B.     Patsy E. Chesnut v. Transportation Cabinet
- C.     Kimberly Hunt v. Tourism, Arts and Heritage Cabinet
- D.     Stephanie Tindall v. Motor Vehicle Commission and Suzanne Baskett
- E.     Mary B. Wade v. Transportation Cabinet
- F.     Margie Williamson v. Cabinet for Health and Family Services
- G.     Aaron L. Wilson v. Energy and Environment Cabinet
- H.     Alphaeus Witherspoon v. Transportation Cabinet

10     **SETTLEMENTS:**

Ms. Gibson moved to consider the following settlements and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Gillis seconded and the motion carried 4-0.

- A.     John Wardia v. Justice and Public Safety Cabinet
- B.     Patricia Johnston v. Environment and Environment Cabinet
- C.     Angel Navarro v. Justice and Public Safety Cabinet (mediated)
- D.     Nikki Townsend v. Cabinet for Health and Family Service (2 appeals – mediated)

11.    **OTHER:**

**Regulations:**

**HB 325:**

After some discussion, Ms. Cassidy made a motion that a letter be written to the General Assembly to advise that the Personnel Board accepts HB 325 as drafted. Mr. Gillis seconded and the motion carried 5-0, with Chair Goodmann voting.

**HB 304:**

The Board Members discussed HB 304 in-depth. Some concerns and comments the Board had are as follows:

Section 1(26) - Definition of “penalization,” and whether it should include promotions. Mr. Sipek stated that the subcommittee, after some discussion, decided to leave it as is and that as far as he knows the definition as it occurs in HB 304 has not changed to include promotions.

Section 1(33) - “Reentrance,” a new definition. The purpose of adding this definition was to draw a distinction with the term “reversion.” Mr. Sipek stated that the term “reentrance” does not appear anywhere in KRS Chapter 18A. There are several terms to use for different types of reversion, which does not affect employees’ rights. Chair Goodmann asked whether the Board could make a recommendation to change the definitions “reentrance” and “reversion.” Mr. Sipek stated that there is a prior version changing the definition of reversion, which includes the term reentrance, which the Board could recommend using.

Chair Goodmann momentarily changed the direction of the discussion to the May 2009 meeting date, since Ms. Gibson needed to leave. Mr. Sipek stated that the meeting is currently scheduled for May 8, 2009. Mr. Sipek stated that he and Mr. Crocker will be attending the Kentucky Association of Administrative Adjudicators’ annual training which is scheduled for the same day.

After some discussion, Ms. True moved to change the May Board Meeting to Monday, May 11, 2009. Ms. Gibson seconded and the motion carried 4-0. Ms. Gibson left the meeting at approximately 12:55.

The discussion of HB 304 resumed.

Section 6 – Personnel Board Elections. Mr. Sipek stated that HB 325 is better than what is stated in HB 304. Mr. Sipek stated, however, if both pass, the Board would get the best of both worlds.

Section 7(6) - Mr. Sipek stated that there is some concern about the Board’s annual reports. Mr. Sipek stated that some information to be included in the report would not be known by the Board without contacting other state agencies, specifically pertaining to grievances. Another concern is the average amount of time it takes to resolve employee complaints. Mr. Sipek stated that it is good information to have, but it may be difficult to compile. Chair Goodmann asked if that information could be compiled by KHRIS. Mr. Gillis stated that could be done with KHRIS.

Section 8(3)(c) - Suspension with pay. Concern is with the term “suspension.” The Board concurred that term should not be used.

Section 8(28) – Mr. Sipek stated that this could include court decisions by the Franklin Circuit and Court of Appeals, which the Board would have to get their permission to post their orders. Ms. True asked how much detail would be included. Mr. Sipek stated that it would include the recommended order, final order, court opinions (especially if it changed the outcome.) Ms. Cassidy stated that possibly a separate order could just state what the decision is and only post that, i.e. dismissed, etc. and not the details. Mr. Sipek stated that one way to



comply would be to just issue the Board's final order, which doesn't provide much information. Mr. Gillis stated that if HB 304 did not pass, then maybe the Board could select a few cases after each meeting to be posted on the web site.

Section 9(7) –Mr. Sipek stated that the intent of this provision (twelve month probationary period) is to keep employees from “burrowing” (a non-merit employee appointed to a merit position). The Board concurred it raised concerns.

Section 11(2) – Presently if an employee is ineligible to receive block 50s, any compensatory earned over 240 hours is converted to sick. Ms. True stated that in the past any compensatory hours over 240, the employee worked for free. Both Ms. True and Mr. Gillis advised this new language could be expensive to retirement, if credited as sick leave.

At the conclusion of the discussion, Mr. Sipek stated that he would write a letter of concern to Representative Cherry and copy Secretary Jackson.

There being no further business, Ms. Cassidy moved to adjourn. Ms. True seconded and the motion carried unanimously. (1:48 p.m.)

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Christine J. Goodman, Chair

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Robert B. Frazer, Vice-Chair

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Betty Gibson, Member

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Suzanne Cassidy, Member

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Julie True, Member

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Larry Gillis, Member

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John Dunaway, Member